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No. 80-1748

In the Supreme Court of the United States

OCTOBER TERM, 1980

RONALD MORELLI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

Petitioner contends (1) that the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, "does not authorize the prosecution of individuals for combining together to commit criminal acts where the association is solely for the purpose of engaging in that activity and not related, in any fashion, to the conduct of a legitimate business or organization" (Pet. 6), and (2) that the predicate acts of racketeering did not constitute a "pattern of racketeering activity" under RICO.

1. Following a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted on one count of conducting the affairs of an enterprise through a pattern of racketeering activity and the collection of unlawful debts, in violation of 18 U.S.C. 1962(c); one count of conspiring to commit that offense, in violation of 18 U.S.C. 1962(d); and two counts of wire

fraud, in violation of 18 U.S.C. 1343.[1] Petitioner was sentenced to concurrent terms of 15 years' imprisonment on each of the racketeering counts and five years' imprisonment on each of the wire-fraud counts, and was fined $10,000 on the RICO conspiracy count. The court of appeals affirmed (Pet. App. 19-39).

The evidence at trial is set forth in detail in the opinion of the court of appeals (Pet. App. 20-33). In brief, "there was ample evidence of [petitioner's] full involvement in the enterprise and in the conspiracy itself" (*id.* at 21). Petitioner "was the *de facto* head of the enterprise, coordinating its activities, passing judgment upon various schemes proposed by the other members, and acting as a reliable treasurer" (*ibid.*). Petitioner also devised several of the plans or schemes employed by the enterprise (*id.* at 22-27). "The general purpose of the enterprise was the development of continuing schemes (or 'scams') to obtain money from unwitting but vulnerable victims. * * * In operating the enterprise, each scheme or 'scam' was carefully crafted by the enterprisers to appeal to the victim's particular weakness, whether for gambling, sex, or dishonest profit" (*id.* at 20-21).

Insofar as relevant here, the government's evidence focused primarily on two incidents concerning petitioner. In one instance, petitioner "devised a plan" (Pet. App. 22) to involve Ed Vervane, Jr., in a rigged card game. Vervane eventually loss $3000. In order to collect the debt, the

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[1] Petitioner was also charged in six other counts involving wire fraud, extortion, and the use of wire facilities to facilitate extortion (Pet. App. 19). These counts were dismissed by the district court, "perhaps from an abundance of caution" (*id.* at 37).

participants in the enterprise thereafter roughed up Vervane and threatened his father. As a result, the debt was ultimately paid (*id.* at 22-23).[2]

In the second incident, the enterprise unsuccessfully sought to get James Hutton into a similar rigged card game. However, it succeeded in persuading Hutton to participate in a fictitious scheme to make money from various illegal activities. Hutton lost approximately $200,000 that he put up on several occasions to finance the activities (Pet. App. 25). In an attemt to obtain one last " 'big cash load' " from Hutton (*id* at 27), petitioner proposed a new narcotics venture that would enable Hutton to recoup his losses and gain a profit of $100,000. Hutton hesitated to advance the $35,000-$50,000 requested by petitioner. While subsequently in Florida on vacation, petitioner and other participants in the enterprise spoke by telephone with Hutton in Michigan to convince him to invest in the venture. Although he declined to do so, Hutton did telegraph $200 in expense money to Florida (*id.* at 25-33). These transactions formed the basis of petitioner's conviction on the wire-fraud counts.

2.a. Petitioner principally argues (Pet. 6-12) that "a wholly illegitimate group which has no existence or purpose other than the commission of the acts which constitute the 'pattern of racketeering' * * * is not an 'enterprise' within the meaning of [RICO]" (*id.* at 6).[3] The question whether a group of individuals associated in fact to commit unlawful acts for profit can constitute an "enterprise" under RICO is currently before this Court in *United States* v. *Turkette*,

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[2]This debt was illegal under the law of the state where the card game and the collection efforts took place. Other instances of collecting illegal gambling debts were also demonstrated by the government's evidence.

[3]We note that petitioner did not raise this issue in the court of appeals (see Pet. App. 39).

No. 80-808 (argued Apr. 27, 1981). Accordingly, consideration of petitioner's contention should be deferred pending the Court's decision in *Turkette*.

b. Petitioner also argues (Pet. 13-17) that the two predicate acts of wire fraud do not constitute a "pattern of racketeering activity" because they arose in "a single criminal episode" (*id.* at 13). While not contesting that "separate offenses may be supportable for purposes of defining acts of wire fraud" (*ibid.*), he asserts that RICO requires "that the two predicate acts must represent different criminal episodes" (*id.* at 14).

This contention does not warrant further review. It rests on the premise that the $200 Hutton wired to Florida occurred in response to a single telephone conversation that petitioner and his confederates had with Hutton (see Pet. 5, 16). However, as the court of appeals correctly observed (Pet. App. 31, 33, 35), the government's evidence was sufficient to show that two telephone calls were made from Florida to Michigan and that Hutton sent the money as a result of the second one. To the extent there may have been a discrepancy in the testimony on this point, it presented only a question of credibility for the jury to resolve. Viewing "*all of the evidence* * * *" in the light most favorable to the prosecution," it is clear that a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson* v. *Virginia*, 443 U.S. 307, 319 (1979); see also *id.* at 326.

Moreover, apart from the pattern of racketeering activity, petitioner was charged with conducting the affairs of the enterprise through the collection of unlawful debts. The unchallenged evidence in this regard is fully adequate to sustain his convictions.

Finally, contrary to petitioner's assertion, RICO does not require that the predicate acts of racketeering take place in different criminal episodes. Rather, the statute provides

only that there be a "pattern of racketeering activity" through which the affairs of the enterprise are conducted. "While there may indeed have been a single scheme * * * it turned out that several acts of racketeering were contemplated to achieve that objective. * * * [We find] no support for the argument that RICO 'require[s] a showing of separate and unrelated schemes, as a precondition for finding two indictable "acts" under [the mail-fraud statute] that would constitute a "pattern of racketeering activity" under [RICO].' " *United States* v. *Starnes*, Nos. 80-1437, 80-1438 (7th Cir. Mar. 20, 1981), slip op. 7, quoting *United States* v. *Weatherspoon*, 581 F. 2d 595, 601 n.2 (7th Cir. 1978). As indicated in the cases cited by petitioner (Pet. 14-15), RICO is satisfied if the acts constituting the pattern of racketeering are related to the affairs of the enterprise. See also, *e.g.*, *United States* v. *Bright*, 630 F. 2d 804, 830 n.47 (5th Cir. 1980); *United States* v. *Anderson*, 626 F. 2d 1358, 1367 (8th Cir. 1980), cert. denied, No. 80-766 (Feb. 23, 1981); *United States* v. *Weisman*, 624 F. 2d 1118, 1122 (2d Cir. 1980), cert. denied, No. 80-62 (Oct. 6, 1980); *United States* v. *Elliott*, 571 F. 2d 880, 899 n.23 (5th Cir.), cert. denied, 439 U.S. 953 (1978).[4]

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[4]At all events, petitioner's conviction on the RICO conspiracy count is unaffected by this argument, since a conspiracy can exist regardless of the commission of predicate offenses. Because petitioner's sentence on the substantive RICO count is concurrent with his sentence on the conspiracy count, it is unnecessary for the Court to consider the validity of his substantive conviction. See, *e.g.*, *Andresen* v. *Maryland*, 427 U.S. 463, 469 n.4 (1976); *United States* v. *Barnes*, 412 U.S. 837, 848 & n.16 (1973).

It is therefore respectfully submitted that the petition should be held pending decision in *United States* v. *Turkette*, *supra*, and that the first question presented should be disposed of in light of that decision. In all other respects, the petition should be denied.

WADE H. MCCREE, JR.
Solicitor General

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